

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RESPONSE OF THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD TO URGENT OBJECTION OF INDIVIDUAL
PLAINTIFFS RETIREES AND BENEFICIARIES OF THE ERS TRUST TO
THE MODIFIED EIGHTH AMENDED TITLE III JOINT PLAN OF
ADJUSTMENT OF THE COMMONWEALTH OF PUERTO RICO, ET AL.**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and together with the Commonwealth, and ERS, the “Debtors”), pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² respectfully submits this response (the “Response”) to the *Urgent Objection of the Individual Plaintiffs Retirees and Beneficiaries of the ERS Trust to*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. [ECF No. 19766] (the “Untimely Objection”),³ filed on January 14, 2022 by certain individual plaintiffs as specified in the Untimely Objection (collectively, “Objectors”), and in accordance with the Court’s *Order Scheduling Briefing of Urgent Objection of the Individual Plaintiffs Retirees and Beneficiaries of the ERS Trust to the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.*, dated January 14, 2022 [ECF No. 19779].⁴

Response to the Untimely Objection

1. After years of litigation between the Oversight Board and ERS bondholders, and with the assistance of the Court-appointed Mediation Team, the Oversight Board and such bondholder groups agreed to compromise and settle such litigation and, in connection therewith, negotiated the terms for treatment of ERS bondholder claims pursuant to a plan of adjustment. Such understanding was memorialized in the *Amended and Restated Stipulation (A) Allowing Claims of ERS Bondholders, (B) Staying Pending Litigation, and (C) Providing for Treatment of Claims of ERS Bondholders and Dismissal of Pending Litigation Pursuant to a Plan of Adjustment*, April 2, 2021 [ECF No. 18791-9; Debtors Ex. 19] (the “ERS Stipulation”). The terms of the ERS Stipulation have been incorporated into the *Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 19784] (the “Plan”), which has been overwhelmingly accepted by ERS bondholders.

³ On January 16, 2022, Objectors filed their *Informative Motion of the Individual Plaintiffs Retirees and Beneficiaries of the ERS Trust Regarding the Sixth Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. at ECF # 19784 and ECF #19785* [ECF No. 19790] (the “Informative Motion”), noting that the Untimely Objection is moot in light of certain revisions made to the Plan (as defined below).

⁴ The Oversight Board’s omission of any response to arguments raised in the Untimely Objection shall not be deemed a waiver of any rights, arguments, and defenses of the Oversight Board, which the Oversight Board expressly reserves.

2. The Untimely Objection requests that the litigation entitled, *Administración de los Sistemas de Retiro de los Empleados del Gobierno y la Judicatura de Puerto Rico v. UBS Fin. Servs. Inc. of Puerto Rico*, Civ. No. KAC-2011-1067 (803) (the “UBS Action”), currently pending in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part, be deleted from the definition of “ERS Litigation” in Section 1.224 of the Plan and be excluded from the actions to be dismissed, with prejudice, pursuant thereto. Untimely Objection at 8. The UBS Action was included in the definition of “ERS Litigation” in the solicitation version of the Plan filed on July 30, 2021 [ECF No. 17627]—over five (5) months before the Untimely Objection was filed. Nonetheless, following the Debtors’ extensive solicitation process, which included a multitude of radio and publication notices, alerting parties in interest of the Court’s October 19, 2021 deadline to object to confirmation of the Plan, among other things [ECF Nos. 17639, 19108-1 through 19108-4], Objectors filed the Untimely Objection on January 14, 2022—approximately **three (3) months after the objection deadline**—conceding without further justification for their untimeliness that they “just [became] aware” of the inclusion of the UBS Action in Section 1.224 of the Plan. Untimely Objection at 4.

3. In the *Reply in Opposition to Urgent Objection of the Individual Plaintiff Retirees and Beneficiaries of the ERS Trust to the Modified Eighth Amended Title III Joint Plan of Adjustment to the Commonwealth of Puerto Rico, et al.*, dated January 14, 2022 [ECF No. 19782], UBS Financial Services Incorporated of Puerto Rico (“UBS Financial”), the defendant in the UBS Action, raises several issues to the Untimely Objection and objects to the relief requested as being untimely and prejudicial to the interests of UBS Financial, including that UBS Financial may have otherwise responded to the Plan.

4. As set forth in decretal paragraph 3 of the ERS Stipulation, it is the agreement of the Oversight Board and the ERS bondholders party thereto, and thus the intention of the Oversight Board in connection with the Plan, to permit the continuation of the UBS Action.⁵ The inclusion of the UBS Action in the definition of “ERS Litigation” was in error. Accordingly, in the most recent version of the Plan, filed on January 14, 2022, the Oversight Board has deleted the UBS Action from the definition of “ERS Litigation” in Section 1.224 of the Plan. *See Notice of Filing of Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 19785]. Accordingly, the Oversight Board submits that the Untimely Objection is resolved, which Objectors acknowledge in their Informative Motion.

5. Notwithstanding the foregoing resolution, the Debtors reserve their respective rights pursuant to the Plan, including, without limitation, in connection with the conveyance of all ERS assets to the Commonwealth, such as the claims and causes of action set forth in the UBS Action. Additionally, the Debtors are cognizant of the concerns raised by UBS Financial and the revision to the Plan shall not be construed or deemed to waive any rights, arguments, and defenses of the Debtors with respect to the Untimely Objection or any other untimely objection to confirmation of the Plan, which the Debtors expressly reserve.

Dated: January 17, 2022
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock
Martin J. Bienenstock (*pro hac vice*)
Brian S. Rosen (*pro hac vice*)

PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036

⁵ See ERS Stipulation ¶ 3 (“... nothing herein shall stay or prevent the commencing, continuing, filing, or otherwise pursuing any claims or actions in connection with that certain action captioned as *Administración de los Sistemas de Retiro de los Empleados del Gobierno y la Judicatura de Puerto Rico, et al. v. UBS Financial Services, Inc. of Puerto Rico, et al.*, Civ. No. KAC-2011-1067 (803), currently pending in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part.”).

Tel: (212) 969-3000
Fax: (212) 969-2900
Email: mbienenstock@proskauer.com
brosen@proskauer.com

-and-

/s/ Luis F. del Valle-Emmanuelli
Luis F. del Valle-Emmanuelli
USDC-PR No. 209514
P.O. Box 79897
Carolina, Puerto Rico 00984-9897
Tel: (787) 647-3503

OF COUNSEL FOR
A&S LEGAL STUDIO, PSC
434 Avenida Hostos
San Juan, PR 00918
Tel: (787) 751-6764 / 763-0565
Fax: (787) 763-8260

*Attorneys for the Financial Oversight and
Management Board as Representative of the
Debtors*